

In the Matter of Merchant Mariner's Document No. Z-110060-D5  
Issued to: JOHN JOSEPH CAREY

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

421

JOHN JOSEPH CAREY

This matter comes before me upon my direction that it be reconsidered to determine whether or not my Order dated 17 March, 1950, is proper.

NOW UPON FURTHER CONSIDERATION of said Order, it appears to me that a reviewing and appellate authority should not extend or increase a probationary period fixed by an Examiner in proceedings under 46 United States Code 239 (R.S. 4450), as amended;

THEREFORE, I direct that the Decision and Final Order dated 17 March, 1950, be amended as follows:

On page 3, delete the second paragraph of the Opinion.

On page 3, enter the following

ORDER

The Order of the Examiner dated at Philadelphia, Pennsylvania, on 28 November, 1949, is AFFIRMED.

Merlin O'Neill

Dated at Washington, D.C., this 12th day of April, 1950.

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DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

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JOHN JOSEPH CAREY

This appeal comes before me by virtue of Title 46 United States Code 239(g) and 46 Code of Federal Regulations Sec. 137.11-1.

On 28 November, 1949, an Examiner of the United States Coast Guard at Philadelphia, Pennsylvania, suspended Merchant Mariner's Document No. Z-110060-D5 issued to John Joseph Carey upon finding him guilty of "misconduct" based upon eight (8) specifications alleging in substance, that while serving as oiler on the American SS PACO and later the American SS WILLIAM STURGIS, under authority of the document above described

- (1) On or about 8 September, 1946, he failed to "turn to" while said vessel was at Jucaro, Cuba;
- (2) On the same date and at the same place he was under the influence of liquor;
- (3) On 11th and 12th September, 1946, he failed to "turn to" because of intoxication, while said vessel was at sea;
- (4) On or about 22 April, 1947, he failed to perform duty because of intoxication while serving on the SS WILLIAM STURGIS, which vessel was then at Antilla, Cuba;
- (5) On the same date and at the same place, he failed to obey the lawful order of the master that he remain on board and "turn to";
- (6) On the same date and at the same place, he absented himself from said vessel without permission;
- (7) On or about 23 April, 1947, at Antilla, Cuba, he failed to perform his duties because of intoxication; and
- (8) On or about 24, 25 and 26 April, 1947, at Antilla, Cuba, he failed to perform his duties.

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. Although advised of his right to be represented by counsel of his own selection, he elected to waive that right and act as his own counsel. He entered a plea of "guilty" to specifications 1 and 4, but "not guilty" to all other specification.

Thereupon, the Investigating Officer introduced a certified copy of official log book entries relating to Appellant's service, on the SS PACO and the SS WILLIAM STURGIS.

In defense, Appellant offered his own sworn testimony in explanation of certain details

charged against him as offenses.

At the conclusion of the hearing, having heard the statements of the Investigating Officer and Appellant, the Examiner found the charge "proved" by plea to the 1st and 4th specifications and by proof of specifications 2, 5, 6, 7 and 8; he entered an order suspending the merchant mariner's document, above described, and all other valid licenses, certificates of service or documents held by Appellant for a period of seven months, of which the first four shall be outright. The last 3 months shall not be made effective provided no charge under R.S. 4450 is proved against him for acts committed within nine (9) months of 17 March, 1950. Said order also invokes and includes a suspension of four months previously ordered on 6 November, 1946, on twelve months' probation, which probation was violated on 22 April, 1947.

From that order, this appeal has been taken, and it is urged that clemency be extended to Appellant, because:

1. His offenses were committed while he was excessively using alcohol;
2. They were committed two and one half years ago;
3. For the past two years he has been a member of Alcoholics Anonymous and has not partaken of liquor;
4. His conduct when employed on two voyages has been good;
5. His past appetite for alcohol has been overcome;
6. Seafaring is his only means of livelihood.

Two letters of commendation are submitted with the appeal.

Based upon my examination of the record submitted, I hereby make the following

#### FINDINGS OF FACT

At all the times stated, Appellant was serving as a merchant seaman on American vessels under authority of a merchant mariner's document issued by the United States Coast Guard.

On 8 September, 1946, he was serving on the SS PACO; which vessel was then in the port of Jucaro, Cuba. Because of intoxication, he failed to "turn to."

On 22 April, 1947, and subsequent dates, was serving on the SS WILLIAM STURGIS; which vessel was then at Antilla, Cuba. Because of intoxication, he failed to perform his duties, and also failed to obey a lawful order of the master that he remain on board and "turn to"; but instead absented himself, without permission, from the vessel. On 23, 24, 25 and 26 April, 1947, he failed to perform his duties - such failure on the 23rd being due to intoxication.

Appellant has been going to sea for many years. His record of service does not disclose any aggravated offenses.

#### OPINION

The record in this case amply supports the Examiner's findings and action. His violation, within the stated period, of the outstanding probationary order, required that order to be enforced.

From my appreciation of this appeal; and because of Appellant's good conduct since his service on the WILLIAM STURGIS, I direct an entry be made of the following

ORDER

The order of the Examiner dated at Philadelphia, Pennsylvania, on 28 November, 1949, is MODIFIED to read:

That Merchant Mariner's Document No. Z-110060-D5, and all other valid licenses, certificates of service or documents now held by John Joseph Carey be, and the same are hereby suspended for seven (7) months from 17 March, 1950. No part of this suspension shall be made effective provided no offense under R.S. 4450 is proved against Appellant for two (2) years commencing 17 November, 1949. This action approves the enforcement of the earlier probationary suspension. As so MODIFIED, said order is AFFIRMED.

Merlin O'Neill  
Vice Admiral, United States Coast Guard  
Commandant

Dated at Washington, D.C., this 17th day of March, 1950.